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6 NETFLIX, INC.

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION

10 NETFLIX, INC., a Delaware corporation,

11 Plaintiff,

12 v.

13 BLOCKBUSTER, INC., a Delaware  
14 corporation, DOES 1-50,

15 Defendant.

Case No. C 06 2361 WHA

**[PROPOSED] ORDER GRANTING  
PLAINTIFF NETFLIX'S MOTION TO  
DISMISS BLOCKBUSTER'S  
ANTITRUST COUNTERCLAIMS AND  
TO STRIKE AFFIRMATIVE DEFENSES  
OF UNENFORCEABILITY AND  
PATENT MISUSE**

16 Date: August 17, 2006  
17 Time: 8:00 a.m.  
18 Judge: Hon. William Alsup  
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1 Plaintiff Netflix, Inc.'s motion to dismiss Defendant's First and Second Counterclaims  
2 and to strike Defendant's Second and Third affirmative defenses came on for hearing before this  
3 Court on August 17, 2006, at \_\_\_\_\_ a.m. before the Honorable William Alsup, United States  
4 District Court, San Francisco, California, with all parties having appeared through counsel.

5 The Court having reviewed the request, and after consideration of the opposition and  
6 reply papers, arguments of counsel, and all other matters presented to the Court, IT IS HEREBY  
7 ORDERED:

8 Plaintiff Netflix, Inc.'s motion to dismiss is GRANTED on the grounds that Defendant's  
9 First and Second Counterclaims and Second and Third affirmative were not plead with the  
10 particularity required by Rule 9(b) of the Federal Rules of Civil Procedure.

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12 Dated:

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15 Hon. William Alsup  
16 United States District Judge  
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